# TWO NEW LAWS.

## RELATING TO DRUNKENNESS.

## RELATING TO PROBATION OFFICERS.



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# Massachusetts Prison Association.

**OFFICES: 1 PEMBERTON SQUARE, ROOMS 10 AND 11.**

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This Association was organized December 9, 1889. Its objects are as follows:

1. To enlighten public opinion concerning the prevention and treatment of crime.
2. To secure the improvement of penal legislation and prison management.
3. To protect society from habitual criminals.
4. To befriend the innocent and ignorant under accusation.
5. To promote the welfare of those placed on probation by the courts, and also of the families of prisoners.
6. To assist prisoners in the work of self-reform.
7. To aid released prisoners in living honorably.

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The Legislature has enacted two important laws, touching matters in which members of the Massachusetts Prison Association are interested,—that in relation to the punishment of drunkenness, and that authorizing the appointment of probation officers. The Association has been active and influential in securing the passage of these laws, that in relation to the punishment of drunkenness having been prepared and advocated by its representatives. It is felt that they are of great importance, and constitute a marked advance in the methods of dealing with crime and criminals. As the laws are not easily accessible, and it is desirable that all interested in such matters shall be informed in relation to them, this pamphlet has been published.

# The Punishment of Drunkenness.

The new law in relation to the punishment of drunkenness is based upon the assumption that drunkenness is a crime. In this it does not differ from the present law. The first section is practically a re-enactment of the existing statute, giving the power to arrest intoxicated persons without a warrant.

In its provisions for the punishment of drunkenness the new law, by its penalties, emphasizes more strongly than the present law does the theory that drunkenness is a crime. Under the latter the only penalty for the ordinary case of drunkenness is a petty fine. Only 2,000 of the nearly 53,000 arrested in the State for drunkenness last year were punished by definite terms of imprisonment. The new law abolishes the fine as a penalty for drunkenness, and substitutes imprisonment in all cases.

The enforcement of the severer penalties of the present law is very difficult. The prisoner may be known to everybody as an habitual drunkard, but unless he has been convicted of drunkenness twice before within a year, he cannot be sentenced to imprisonment. Even where previous arrests have been made during the year, that fact does not give the court the right to impose such a sentence, unless the previous convictions are alleged in the complaint. In most cases this involves so much inquiry and investigation that it is impracticable. The result is that only one in twenty-five of those arrested for drunkenness last year was sentenced to imprisonment.

The new law removes all these hindrances to the proper punishment of habitual drunkards. No distinction is made between "first," "second," and "third" offences. It recognizes but one crime — drunkenness. For this it provides but one punishment — imprisonment. It assumes that the court can be trusted to discriminate between different individuals, and it therefore gives the court the largest discretion. It may sentence a prisoner to imprisonment for any period which may be thought best — for a day, that he may become sober, or for a year, that, if an habitual drunkard, he may be reformed if possible, and by a long period of compulsory abstinence may become able to abstain from drink voluntarily.

## THE ABOLITION OF THE FINE.

Many considerations led to the abolition of the fine as a penalty for drunkenness. The most important of these was the fact that it led to the treatment of drunkards without much discrimination. Some were very properly released by the courts without any sentence, but if one was to be sentenced at all, it must be to the payment of a fine. No matter what his past record was, the man who was complained of for a "simple drunk" could only be fined, though he had been before the court a hundred times before.

Another phase of this lack of discrimination in sentences for drunkenness under the present system is the uniformity of the imprisonment for non-payment of the fine. No matter what the character of the prisoner may be, if he cannot pay his fine he must be committed to prison for thirty days. There is no alternative. He may be a man who needs merely temporary detention, that he may overcome the effects of drink. He may never have been drunk before. He may have employment waiting when he is discharged, and yet it may be unwise to have him released by the court on the day of his conviction. If he is to be detained at all, he must be fined, and if he is committed for non-payment of his fine, he must be kept for a month, unless pardoned.

## INJUSTICE OF THE FINE SYSTEM.

The unwisdom of this is clearly apparent. But not more so than the injustice of a uniform imprisonment of thirty days for the non-payment of a fine of five dollars. Theoretically this

imprisonment is supposed to be, in some way, an equivalent for the fine. Certainly it is not so to the State. It may have been supposed, originally, that during the month the prisoner could earn for the public the five dollars which he could not pay. As a matter of fact he now earns almost nothing, and is supported for a month at the expense of the tax-payers. If imprisonment for a month is intended to be, for the prisoner, the equivalent of a money payment of five dollars, it is plain that the theory is a bald assumption, and that in practice great injustice attends its operation. To some men a month's imprisonment means a loss of twenty or twenty-five dollars; to another it means a loss twice as great; to the great mass of the drunkards it is no loss at all, but only a luxury, a month of food and shelter without work being a welcome temporary relief from continuous debauchery.

The fine system makes a discrimination between the rich and the poor. A man who has five dollars left after a deliberate debauch may secure his release by the court by paying that amount, though he is the most worthless of citizens, while the industrious man who occasionally yields to temptation, lacking that sum, must lose a month's labor, if his wife or mother or some friend cannot borrow the money to pay the fine.

If imprisonment for thirty days is the proper punishment for drunkenness, it should be imposed directly by the court, on all who are sentenced. It cannot be, under the present law. The only way in which such imprisonment can be secured is by sentencing a person to pay a fine. If he is unable to pay he will be imprisoned. If he can pay, he practically escapes punishment, for a fine of five dollars is little punishment for the man who can pay it. In actual experience it is found that more than one-half of those who are sentenced for drunkenness are imprisoned. If they were the ones most deserving of this form of penalty, the fact that their confinement was secured in this roundabout way would be a less serious objection, but as the release or imprisonment depends solely upon the possession of a few dollars by the prisoner or his friends, it will be seen that the worst are likely to escape, and some of the best will go to prison.

## DISCRIMINATION BY THE COURTS DESIRABLE.

The abolition of the fine, and the substitution of imprisonment as the sole penalty for drunkenness, removes all these

distinctions. The court will be able to discriminate between individuals, as it now does in dealing with most other offences, deciding how long a term of imprisonment is necessary in each case. This is clearly far better than the discrimination made now by the law, which is not based on the character of the prisoner, but upon the amount of money he happens to have. Hereafter, when a person is imprisoned it will be because the court thinks a certain term of confinement is needed or deserved, and not because he is too poor to pay the fine. Drunkenness, and not poverty, will be the offence for which he is imprisoned.

## HABITUAL OFFENDERS ESCAPE PROPER PUNISHMENT.

The failure to reach habitual offenders under the fine system, is seen in the fact that thousands of them are repeatedly committed for a month for non-payment of fine. The records of the Boston House of Industry at Deer Island for 1890 showed 542 persons who had been there five times before for non-payment of fines; 235 who had been there 10 times before; 74, 20 times before; 17, 55 times before; 1, 90 times before.

It has sometimes been said that this is exceptional, and that outside of Boston no such evils exist. A recent examination of the records of one of the houses of correction shows that even where the facilities for detecting the habitual offenders are far better than they are in Boston, large numbers escape with a fine. In six months of 1890 there were 421 commitments to this house of correction from a single court for non-payment of fines for drunkenness. Sixty-five of these had been there once before; 32, twice before; 17, 3 times before; 28, 4 times before; 7, 5 times before; 11, 6 times before; 12, 8 times before; 9, 10 times before; 1, 12 times before; 5, 14 times before; 1, 15 times before; 1, 20 times before. In brief, 199 of the 421 had been in the same prison from one to twenty times before. Many of them had undoubtedly also paid fines repeatedly, but they were all punished by a mere fine (which they could not pay), owing to the difficulty of doing anything else with the rounders under the present law. It is also very certain that there must have been hundreds of other habitual offenders dealt with by the same court who escaped imprisonment by the payment of a fine. This is not a criticism upon the court. The evil is inherent in the fine system.

## EXPENSE OF THE PRESENT SYSTEM.

The expense involved in the fine system is an enormous one. Last year more than 23,500 persons were committed to prison for the non-payment of fines for drunkenness. The cost of committing these prisoners and the expense of supporting them for a month apiece is a very large one. Some of them paid their fines, after they were committed, and were released, but thousands served out the prescribed thirty days. There were 3,623 persons held for all offences in the county prisons and the Boston House of Industry, on the 30th of last September, besides those waiting trial; 1340 of these — more than thirty-seven per cent.— were in custody because they could not pay the fines imposed for being drunk. This is probably about the average. If the expense of their maintenance is reckoned at a dollar a week (counting only the cost of food, and nothing for officers, fuel, lights, etc.), the expenditure amounts to almost $70,000 a year. To this must be added the cost of commitment, and many other expenses, if the tax upon the public involved in the futile endeavor to secure these fines is to be ascertained.

It is possible that the number of commitments under the new law will be as large as under the present system, but the prisoner will understand that his imprisonment represents the estimate made by the court of the gravity of his offence, and the judgment of the State that his drunkenness is too serious a crime to be atoned for with a few dollars, and the taxpayer will know that his money is spent in caring for people who need to be imprisoned, and not in attempting to get from twenty-five thousand people every year a pecuniary substitute for imprisonment.

## INTELLIGENT DISCRIMINATION PROVIDED FOR.

Recognizing the criminality of drunkenness, the new law provides for a discrimination between different classes of drunkards, and between different individuals of each class. As has been said, it gives the largest discretion to the courts in the imposition of sentences. It also provides for a careful preliminary sifting of those arrested for this offence. It recognizes the fact that there is some drunkenness which it is not wise to punish. This is no new theory. The police have always exercised their discretion in making arrests for drunken-

ness, and have not been criticised for so doing. No one has ever demanded that all intoxicated persons shall be arrested, or that all persons arrested for drunkenness shall be tried and punished. Many are helped home by the police; many others are assisted home by their friends, or are able to get home, in some way, themselves. In this the wide difference between drunkenness and other crimes is apparent. No policeman would be permitted to pass by an offender of any other class; or to ignore the commission of any other offence as he ignores certain forms of drunkenness which come to his notice. The fact that this can be done without criticism shows the general estimate of the difference between one drunken man and another; between one who is quiet or stupid, and one who is noisy, disorderly or ugly; between one who is intoxicated occasionally, and one who is a constant public nuisance.

The courts as well as the police have always recognized this difference. Last year more than five thousand persons who were brought before the courts for this offence were discharged without sentence. As a rule they were persons who had homes, employment, and dependent families. Among them were many who were arrested for the first time. The police of the State also released about two thousand persons of these classes without complaining of them. They did this without any statutory authority, and at their own risk of a civil suit, knowing that the Supreme Court of the State had ruled in such a way that there was little probability that a suit could be maintained in such a case.

## RESTRICTIONS UPON RIGHT TO RELEASE.

The great objection to having releases made in this way is the lack of responsibility. In most cases the arresting officer now makes the release. There is a constant temptation to bribery and corruption, for no report or record is required, and it is easy to accept a bribe or to release a person who should be retained. The new law authorizes what is now so common, and at the same time imposes restrictions which remove temptations to the improper exercise of the power. It vests this power in the officer in charge of the station, and not in the officer making the arrest. It requires a record of each case in which a person is released. The right to be released under this law is limited to those who declare that they have not been arrested for drunkenness twice before within a year, or who, having been

so arrested, were acquitted in at least one case. The law requires the releasing officer to certify his belief that the prisoner's statement is true. These safeguards cannot fail to secure a careful exercise of this power. There will be many cases in which the past and present record of the prisoner can be ascertained easily. If a man has a home and a family, his wife can be sent for. If he has employment, his employer will come or write or about it; if he is an industrious workingman his appearance will usually indicate it, and he can put the officer in the way of verifying his statement. If he is a youth out of a good family, whose intoxication was an exceptional wrong act in a usually correct life, he can readily secure communication with some one who can satisfy the officer. On the other hand, if he is a "rounder" his appearance will commonly show it; he will be known to the arresting officer as a frequenter of the saloons. If he is a stranger he will not be released, because the officer cannot satisfy himself about his past record. If the arresting officer knows anything specially bad about him, or has any particular reason for wishing him to be kept in custody, he will say so to the keeper of the station, and there is little probability that the latter will discharge him. The officer who has the power of release will not exercise it on a lack of knowledge that the prisoner's statement is false. He must be satisfied that it is true. Doubtful cases will go to the courts, as they do now.

## OFFICERS NOT REQUIRED TO RELEASE APPLICANTS.

It should be carefully noted that the power of release is *permissive*, and not *mandatory*. The keeper of the place of custody "*may*" release a prisoner. There is every reason for believing that he will exercise his power only in behalf of those who have homes and employment, and who are usually law-abiding citizens. There would seem to be no more objection to allowing such persons to be released, under these careful restrictions, than there is in permitting a police officer or constable to help the same man home, or to pass him by unnoticed when a friend is rendering the same assistance.

An added restraint upon the officer is found in the fact that the statement which forms the basis of the release must be investigated afterwards by the probation officer, and if found untrue the man who was discharged must be complained of. It may be said that he cannot be found. Ordinarily this would

not be true. The man who would run away after release will not be able to satisfy the officer that he ought to be released. The fact that the case is to be investigated will be a restraint upon the officer, who will be careful not to be found releasing persons upon false statements. Official pride will prompt him to make sure of the facts before he takes such a responsibility.

If the officer shall not see fit to release a prisoner, he will still have the right to be discharged by the court, on a similar statement, after it has been investigated by the probation officer. This may be done without bringing the prisoner into court, if the judge shall so choose, saving many a first offender and his family from the disgrace attending his public arraignment and trial. If the court shall not see fit to discharge him without a trial — and in many cases such a discharge would be unwise — the trial may proceed, and at the end, if the court is satisfied that the prisoner is not an habitual drunkard, it may place his case on file, or on probation. This right exists now, of course, in every court, but by special mention in this connection the statute suggests the class of cases in which its exercise would be thoroughly consistent with the theory underlying this law.

It will be noticed that the right to release from custody is only given to keepers of station houses within the jurisdiction of courts having probation officers. The reason for this is that where there are no probation officers there can be no such investigation as the law requires. Persons arrested within the jurisdiction of trial justices must therefore be detained for judicial examination.

## THE NEW LAW VALUABLE TO TOWNS.

It has been conceded that the new law is needed in the large places, but its expediency and usefulness in the smaller towns is doubted by some. Even if it should be shown to operate no better than the present law in the towns, the improvement which it will bring in the cities will justify its enactment, for most of the criminal drunkenness is in the cities. There were, last year, 52,814 arrests for drunkenness; 45,982 of these were made in cities; 6,832 in towns. In other words, eighty-seven per cent. of all the criminal drunkenness is in the cities. A large proportion of the remaining thirteen per cent. is in large towns, where the new law is as much needed as in the cities.

The towns, however, will have some great advantages under this bill. The fine system prevents the proper punishment of the habitual drunkard in towns. The judge is under local pressure from his friends and neighbors, who are also the friends and neighbors of the prisoner, to impose a fine, rather than a sentence to imprisonment, even in extreme cases. Under the new law, there being no fine, he must impose upon this class of offenders a sentence to imprisonment.

The great peril from drunkenness in the country town is from roving characters, who, when drunk, are a source of danger. There are hundreds of this class, employed temporarily, in gangs, upon public works. They have no abiding place or social restraints. When drunk they are dangerous. Under the present law they can only be fined. Many of them have money to pay their fines, and are soon upon the streets again. Under the new law the towns may be rid of this kind of men. There is also another class of men who go to towns near their own to get drunk, perhaps because the facilities for indulgence are better. They are prepared to pay fines, and in many cases expect to do so. No station-house officer would think of releasing this kind of men. They cannot, for they cannot be satisfied that the prisoner's statement is probably true. Towns which now have trouble with this class of drunkards will be able to put a stop to the nuisance. Fines have no terror for them, but the certainty of imprisonment will deter. Towns will benefit by the new law in a different way from cities, but none the less surely.

## CO-OPERATION NEEDED.

For the successful administration of this law, a hearty coöperation of police and judicial authorities and probation officers, will be necessary. Either one of them may cause a failure to carry out the purpose of the law in its spirit. If it shall be kept in mind that the purpose of the law is to secure a careful and intelligent discrimination between cases nominally alike, and a judgment upon every individual upon his ascertained record, much that is desirable will be accomplished. As now, the great majority of the cases will be reserved for judicial decision. The law will aid the courts in reaching right conclusions by enabling them to obtain accurate information, and by practically laying down the principle that habitual offenders of this class shall be sentenced to long terms of imprisonment, while those who rarely offend may be treated leniently.

Time will be required to perfect the administration of the new law, which will go into effect upon the first of July. In its enforcement it will greatly need the support of an intelligent public sentiment. The present system has been tolerated for years, in spite of its admitted defects. It was established when the number of cases to be dealt with was small, and the circumstances were entirely different from those of today. No one pretends that it furnishes the means for dealing intelligently and judiciously with an offence which necessitates, as drunkenness now does, sixty-five per cent. of all the arrests made in the State, and furnishes a third of the entire population of the minor prisons. The new law has been carefully framed, after consultation with experts in such matters, with the purpose of furnishing a comprehensive plan for dealing with this problem, whose enormous proportions startle those who seriously consider them. The old system has been allowed to exist merely because it was in existence, though demonstrated to be a failure as a whole. We bespeak for it a fair trial, upon its merits, believing that when it has been in operation a few months, it will be seen to have such manifest advantages over the existing methods as to commend it to universal favor. The present system helps neither the man nor the community; the new one will, if carried out in its spirit, help both.

# THE LAW.

## An Act Relating to the Punishment of Drunkenness.

[Chap. 427, Acts of 1891.]

*Be it enacted, etc., as follows:*

SECTION 1. Whoever is found in a state of intoxication in a public place, or is found in any place in a state of intoxication committing a breach of the peace or disturbing others by noise, may be arrested without a warrant by a sheriff, deputy sheriff, constable, watchman or police officer, and kept in custody in some suitable place until he has recovered from his intoxication.

SECT. 2. Any person arrested for drunkenness may make to the officer in charge of the place of custody in which he is confined, a written statement, giving his name and address, and declaring that he has not been arrested for drunkenness twice before within the twelve months next preceding, or that having been so arrested he has been tried and acquitted in one of the cases, together with a request to be released from custody. If the officer who receives said statement shall be satisfied that it is probably true, and shall so endorse thereon, he may release from custody the person making the same, pending investigation, if he is within the jurisdiction of a court having a probation officer. Each statement made as aforesaid shall be referred by the officer receiving the same to a probation officer, who shall at once inquire into the truth or falsity thereof, and shall endorse thereon, over his own signature, for the use of the court having jurisdiction of the case, the result of the investigation. If said investigation sustains the truth of said statement, the court may thereupon direct that such person be released from custody without bringing him into court, if he has not been released. If the investigation shows that the statement made by a person who has been released from custody, as afore-

said, was true, no further action shall be taken in his case. If it shall appear to the probation officer to be untrue, he shall so notify the officer who made the arrest, and he shall make a complaint against said person for drunkenness. If said case is within the jurisdiction of a trial justice, he shall make such inquiries as he shall think necessary, relative to the truth or falsity of said statement, and may direct that the person making the same be released from custody without bringing him into court, unless he is satisfied that said statement is false. No officer making an arrest under the provisions of this act shall be liable for illegal arrest or imprisonment if the person arrested shall be released from custody upon his own request as herein provided.

SECT. 3. Every person arrested for drunkenness, when he has recovered from his intoxication, shall be informed by the officer in charge of the place in which he is kept in custody, of his right to request to be released as hereinbefore provided. If he shall not make such request, or if he shall not be released, as hereinbefore provided, the officer making the arrest shall make a complaint against him for drunkenness.

SECT. 4. A full record of each case in which a person is released from custody, as aforesaid, together with the statement made by him, shall be kept by the court or trial justice. When a person is so released by any of the several municipal courts of the city of Boston, or within their jurisdiction, a certified copy of the statement made as aforesaid, together with the name of the officer making the arrest, shall be sent by such court to the clerk of the municipal court of the city of Boston for criminal business.

SECT. 5. If a male person is convicted of drunkenness by the voluntary use of intoxicating liquor, he may be punished by imprisonment in the jail, or in any place provided by law for common drunkards, for not more than one year, or in the Massachusetts reformatory, as provided by chapter three hundred and twenty-three of the acts of the year eighteen hundred and eighty-six. If a female person is so convicted she may be punished by imprisonment in the jail, or in any place provided by law for common drunkards, for not more than one year, or in the reformatory prison for women for not more than two years: *provided*, *however*, that if the person so convicted shall satisfy the court or trial justice, by his own statement or otherwise, that he has not been arrested for drunkenness twice before within the twelve months next preceding, or that having

been so arrested he has been tried and acquitted in one of the cases, his case may be placed on file.

SECT. 6. It shall be the duty of probation officers to assist the courts by which they are severally appointed, by obtaining and furnishing information in regard to previous arrests, convictions and imprisonments for drunkenness, and such other facts as the court shall direct, concerning persons accused of drunkenness.

SECT. 7. Each of the said officers shall keep a full record, well indexed, of each such case investigated, in such form as the court shall direct. The probation officers of the several municipal courts within the city of Boston shall furnish to the municipal court for the city of Boston a copy of the record in each such case. Said court shall cause all records and statements received by it as aforesaid, to be consolidated and so kept that they can be readily consulted, and for such purpose may employ such clerical service as shall be necessary. The compensation fixed by the court for such service, and such other necessary expenses as shall be incurred by the court in carrying out the provisions of this section, shall be paid from the treasury of the county of Suffolk, upon vouchers approved by said court. All records and statements made under this act shall be open at all times to the police officials of the several cities and towns of the Commonwealth. The board of police of Boston, the city marshals and chiefs of police of the other cities and towns, the keepers of jails and masters of houses of correction, and the superintendent of the Boston house of industry shall furnish to each other and to said probation officers, and said probation officers shall furnish to each other, on application, all information in their possession relative to persons whose cases shall be under investigation, as hereinbefore provided.

SECT. 8. Sections twenty-five, twenty-six, twenty-seven and twenty-eight of chapter two hundred and seven of the Public Statutes, so much of chapter three hundred and seventy-five of the acts of the year eighteen hundred and eighty-five as prescribes a penalty for drunkenness, chapter three hundred and seventy-seven of the acts of the year eighteen hundred and eighty-eight, and such other acts and parts of acts as are inconsistent with this act are hereby repealed.

SECT. 9. This act shall take effect on the first day of July, in the year eighteen hundred and ninety-one.— *Approved, June 11, 1891.*

# Probation Officers.

Many years ago a gentleman who had an interest in his fellow-men, Mr. John Augustus, used to go to the police court in Boston, from time to time, to look into the cases of persons who had been arrested who could properly be released without imprisonment. He would assume some responsibility for them, agreeing with the court to look after them, and to see that they were surrounded with good influences, with the hope of reclaiming them from wrong courses. Later on "Uncle" Cook took up the same work, and carried it on for many years. Neither of them had any official position or compensation, though the latter received a small salary as chaplain of the Suffolk county jail.

The work was so successful, and so manifestly wise, that in 1878 the late Hon. M. J. Flatley, then a member of the Senate, secured the passage of a law (chap. 198, Acts of 1878) requiring the appointment of a probation officer by the city of Boston. His duties, as laid down by the statute, were to attend the sessions of the criminal courts in Suffolk County; to investigate the cases of persons charged with or convicted of crimes and misdemeanors, and to recommend to the courts the placing on probation of such persons as might be reasonably expected to reform without punishment. He was also required to visit the offenders placed on probation at his suggestion, and to render such assistance and encouragement as would tend to prevent them from again offending. The appointment of Capt. Edward H. Savage, formerly chief of police of Boston, to this office, secured so satisfactory an administration and so good results that in 1880 (Chap. 129) a law was passed authorizing the appointment of a probation officer in each city and town. In 1882 the appointment of two additional officers for the Boston courts was authorized.

The law of 1880, being permissive, was acted upon by only a few of the cities and towns, the main reason being that the salary must be paid by the city or town making the appointment. The law passed by the Legislature of 1891 requires the appointment of a probation officer, by each municipal, police and district court, and provides for the payment of their salaries from the county treasuries.

## AN ENLARGED WORK.

The adoption of this as the fixed policy of the State is so important a movement that it deserves special attention. It has always been found necessary to arrest persons whose cases could be disposed of wisely without imprisonment, and the custom of laying cases "on file" has provided a way of treating this class of persons. There are many offences committed which do not show that the offender has a real criminal character. The wrong act is at variance with the general current of the offender's life. It may indicate a tendency to go in a wrong direction, but not a settled purpose to do so. The offence cannot be allowed to pass unnoticed. The safety of the community and the interests of the offender make it necessary to arrest him. But neither of these considerations makes it necessary to punish him. He needs the warning which comes from detection, arrest and conviction. But to imprison him is more likely to develop the tendency which his wrong act evinced than to arrest it. Prison influences are not conducive to reformation, especially under a system which permits the confinement of all classes of criminals together, without any successful attempt at classification. The minor prisons, for the punishment of petty offences, always contain a proportion of prisoners who have served sentences elsewhere for the worst of crimes. Even among those who have only committed misdemeanors there are to be found the vilest and worst men and women. Association with these convicts is certain to contaminate persons who, though they have done one criminal act, are not familiar with the methods and courses of habitual lawbreakers and depraved members of society.

## DIFFICULTIES OF DISCHARGED CONVICTS.

The stigma which attaches to one who has been in prison makes it very difficult for a discharged convict to regain his

place in society. No matter how good his purposes may be, he feels that he is marked, as he is, and he is very likely to lose his courage and drop into the criminal class. This is made very easy for him by the fact that he is constantly coming in contact with fellow-convicts who have also been discharged, and who are ready to lead him astray, and many of them take a fiendish delight in preventing him from regaining his place as a good citizen. All these things make it very probable that one who has been imprisoned for a first offence will continue in wrong courses.

## PROBATION THE ONLY REMEDY.

The probation system is the only one which can remedy the defects of the old methods. It is often almost as injurious to a man who has committed his first offence to ignore his wrong-doing as it is to punish it by imprisonment. It encourages him in evil courses. If he has no real principle to restrain him, if his first offence is ignored he is very likely to repeat it, and others whose tendencies are in the wrong direction are very likely to lose the restraint which his punishment would afford. But probation is more effective for all these purposes than is punishment. Ordinarily the punishment for minor first offences is not a severe one. When the petty fine has been paid, or the brief term of imprisonment has been served, the restraint is at an end. But probation prolongs this restraint. The probationer is made to feel it. He realizes that the question whether he shall escape punishment or receive it is one which he must answer for himself. He has every possible incentive to good behavior, and to the breaking up of bad associations and companionships. Being under the eye of the probation officer, and usually required to report to him from time to time, he knows that a repetition of his offence, or any misbehavior, whether criminal or not, will lead to his surrender to the court, which will not fail to punish his offence. Most probationers have friends who will press the necessity for exemplary conduct. If the probation officer is a man who has an interest in those under his supervision, he cannot fail to be helpful to them, by making them feel that he is their personal friend, as well as the representative of the law. He will find many ways of showing his friendliness, by obtaining employment, giving wise counsel, and in every possible way assisting the probationer to secure once more his place in the ranks of law-abiding citizens. It will be seen

readily that placing a person on probation is a very different thing from laying his case on file, without supervision or restraint.

## VALUABLE INVESTIGATIONS TO BE MADE.

Besides this personal work for those placed in his care, the probation officer, under the new law, will have other and very important duties. Being appointed by the court, and acting under its direction, he becomes, in many ways an assistant to the judge. For many years it has been required that the cases of juvenile offenders shall be investigated by a state agent, who shall be able to inform the court as to the offender's general character and surroundings, with the purpose of disposing of the matter without subjecting the child to punishment, if practicable. The system has saved thousands of juvenile offenders from lives of crime. The new law extends this system to adult offenders. Courts are often compelled to impose sentence because they have no means of ascertaining whether the offender can be dealt with wisely in any other way. The probation officers appointed under this law have, as one of their principal duties, that of making investigations. They are expected to be able to assist the court to an intelligent decision, by furnishing accurate information regarding persons charged with crime. It is the business of the police to furnish evidence to secure conviction. But they cannot be expected to inquire as to the character, home surroundings, habits, employment, associates, etc., of the persons whom they arrest. This investigation must be made by the probation officer. In some instances, especially where the accused is friendless, and his guilt is only proved by circumstantial evidence, he may render good service to the court by investigating the statements of the accused in his own defence, ascertaining whether the evidence against him may not be offset by other facts in his favor, so that innocent persons may not be convicted, as some now are, or convicted of offences much graver than those really committed.

## DUTIES CONNECTED WITH CASES OF DRUNKENNESS.

The probation officers will have important duties in connection with the enforcement of the law in relation to the punishment of drunkenness. As imprisonment is hereafter to be the

only punishment for that offence, a large number of cases of this class will be placed on probation. Many persons convicted of this offence have homes, families and employment. The imposition of a fine does not deter them from occasional excessive indulgence. But the possibility of a sentence to imprisonment will have a strong deterrent influence. With an officer in every court, paid for looking after probationers, there will probably be many more cases of this class placed on probation than heretofore. When the probationer understands that any future lapse will be followed by imprisonment, and knows that he is so closely watched by the probation officer that any lapse will be known and punished at once, he will avoid further indulgence, in most cases. It should be possible to save the State more than the cost of the probation system by reducing the number of prisoners now supported in the minor prisons on account of drunkenness. A person of this class is far more likely to reform on probation than in prison, and the State will be saved the cost of his commitment and maintenance. The probation officer, by keeping a complete record, will also be of great assistance to the court, by furnishing information on which the court can impose long sentences on habitual offenders.

## QUALITIES NEEDED FOR SUCCESSFUL SERVICE.

Enough has been said to show the great importance of this work, and the necessity for great care in the selection of probation officers. The possession of a warm heart and a kindly, sympathetic nature is not the only qualification needed. The probation officer who possesses these, and lacks that knowledge of human nature which will enable him to discriminate between weakness and wickedness will fail. It should be remembered that he is to deal, generally, with persons who have done wrong, and who have an interest in deceiving. They will make the past appear as well as possible, and assurances of penitence and promises of reformation will be made easily, to secure escape from punishment. Probationers will need advice and sympathy, but they will also need the tonic influences of contact with a strong character.

The probation system will be new in most parts of the State. Its purpose and plan should be carefully studied by those interested in such matters. The degree of success or failure which will attend the administration of the law will depend

very largely upon the existence of an intelligent public sentiment regarding it. This sentiment can make itself felt in the appointment of proper probation officers, and in assisting them in their duties. No probation officer can secure the best results for his work unless he has the hearty coöperation of men and women outside of official circles who will help him in various ways which he can from time to time suggest. With such a sentiment, manifesting itself in such coöperation, thousands who have committed an offence against the laws may be kept out of the criminal class, and saved to themselves, their families and the State.

# THE LAW.

## An Act to Provide for the Appointment of Probation Officers.

[Chapter 356, Acts of 1891.]

*Be it enacted, etc., as follows :*

SECTION 1. The justice of each municipal, police or district court shall appoint one person to perform the duties of probation officer, as hereinafter named, under the jurisdiction of said court. The appointment of such officer for the municipal court of the city of Boston shall be made by the chief justice of said court, who may appoint as many assistants, not exceeding three, to said probation officer as are needed to carry out the purposes of this act. Each probation officer appointed as herein provided shall hold his office during the pleasure of the court making the appointment.

SECT. 2. Said probation officers shall not be active members of the regular police force, but shall in the execution of their official duties have all the powers of police officers. The records of any of said probation officers may at all times be inspected by the chief of police or city marshal of any city or town, or by the board of police of the city of Boston.

SECT. 3. Each probation officer shall inquire into the nature of every criminal case brought before the court under whose jurisdiction he acts, and may recommend that any person convicted by said court be placed upon probation; the court may place the person so convicted in the care of said probation officer for such time and upon such conditions as may seem proper.

SECT. 4. Each person released upon probation as aforesaid shall be furnished by the probation officer with a written statement of the terms and condition of his release; each probation officer shall keep full records of all cases investigated by him, of all cases placed in his care by the court, and of any other duties performed by him under this act.

SECT. 5. The clerk of each municipal, police or district court, or the justice thereof if there is no clerk, shall, when an appointment is made under this act, forthwith notify the commissioners of prisons of the name of the officer so appointed. Each probation officer shall make a monthly report to the commissioners of prisons in such form as said commissioners shall direct.

SECT. 6. The compensation of each probation officer shall be determined by the justice of the court under whose jurisdiction he acts, subject to the approval of the county commissioners of the county in which the court is located, and shall be paid from the treasury of the county, upon vouchers approved by said justice and the county commissioners, or, in the county of Suffolk, the commissioners of public institutions.

SECT. 7. A probation officer may, at the request of any justice of the superior court, investigate the case of any person on trial in that court and make a report upon the same to said justice, and may upon the order of the court take on probation any person convicted in said court ; the compensation for such services shall be paid from the treasury of the Commonwealth upon vouchers approved by said justice. The officers appointed under this act may also perform the services of probation officers named in section sixty-nine of chapter two hundred and twenty of the Public Statutes, and for said services may receive such compensation as the county commissioners or the commissioners of public institutions, as the case may be, shall approve.

SECT. 8. Any officer who refuses or neglects to make returns or to perform any of the duties required of him by this act shall forfeit two hundred dollars to the use of the Commonwealth.

SECT. 9. Nothing in this act shall be so construed as to interfere with any of the duties required of the board of lunacy and charity under the provisions of the statutes relating to juvenile offenders.

SECT. 10. Sections seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight of chapter two hundred and twelve of the Public Statutes, chapter one hundred and twenty-five of the acts of the year eighteen hundred and eighty-two, and all acts or parts of acts inconsistent with this act are hereby repealed.

SECT. 11. This act shall take effect upon the first day of July in the year eighteen hundred and ninety-one. [*Approved May 28, 1891.*]